



In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-414

CAPE PUBLICATIONS, INC. and BUDDY BAKER
and DUKE NEWCOME,

Petitioners,

vs.

DONALD F. ADAMS,

Respondent.

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

PREFACE

The parties will be referred to herein as the plaintiff and the defendants. The following symbols will be used:

A—Petitioners' Appendix

B—Respondent's Appendix

STATEMENT OF THE FACTS

We cannot agree with the appellants' statement of facts. It does not even contain the libelous statements, a reading of which is essential to understanding this case. The primary published statements are:

"1. 'Blacklisted' Vero Contractors Claim Shakedowns, Harassment;

"(a) In the building department of the City of Vero Beach, 'You either play the game or you're out of business.'

"(b) One contractor told TODAY that Donald F. Adams, director of the City-County Building Department attempted to shake his superintendent down for \$1,000.

"(c) The mayor of Indian River Shores told TODAY that Adams attempted to persuade the mayor to write a personal check to Adams each year for \$2,000 and another for \$400 to Adams' secretary for 'extra work' which town building inspections caused Adams—work Adams was already being paid for.

"2. 'Rotten Business,' LeBase Charges:

"(a) Bob LeBase, Vero Beach drywall contractor, describes construction work as 'a rotten goddamn business.' City Building inspectors can put a man out of business if they wish, the contractor said. Don Wilcox, executive Vice President and project director for the Village Spires Condominium on the beach, told TODAY that Donald F. Adams, city-county building and zoning director of Vero Beach, attempted a \$1,000 shakedown on one of Wilcox's projects.

"(b) Wilcox walked away from Adams, but quoted his foreman, Art Bernard, as saying he asked Adams what they would have to do to keep the project moving. Bernard told Wilcox it would take \$1,000 paid to Adams personally, Wilcox told TODAY.

"(c) Wilcox said he was against his firm becoming involved in a payoff and offered to let law enforcement officers observe his foreman handing over marked bills to the city official for the purpose of making an arrest.

"(d) On another recent occasion Wilcox said Adams expressed interest in three smoked mirrors in the Village Spires. Adams inquired as to the cost and was told by Bernard the contractor paid \$150 and if Adams wanted them he could purchase them at that price. Adams gave a personal check for \$150 to Bernard and took the mirrors. The next day he returned and told Bernard he wanted his \$150 refunded in cash. He did not return the mirrors." (B 29, 30)

The above three factual situations will be referred to as the \$1,000 bribe, the \$2,000 claim for extra work, and the mirror incident.

The main characters in this case are:

Adams	The plaintiff building inspector who was allegedly libeled
Newcome	The newspaper reporter who wrote the articles
Wilcox	Project Director of controversial condominium
Bernard	Employee under Wilcox
St. Pierre	A builder who had been having a feud with building inspector Adams prior to this. A good friend of reporter Newcome
Sardella	A deputy sheriff and close friend of reporter Newcome and St. Pierre
DiBassie	A contractor incorrectly referred to in the article as Bob LeBase who allegedly was the source of some of the material printed by Newcome
Miller	Mayor of Indian River Shores

\$1,000.00 BRIBE

Reporter Newcome knew that the plaintiff had a pre-existing dispute with St. Pierre, a builder (B 1). The facts of the pre-existing dispute are not particularly material to this case. The fact that there was a dispute is material to demonstrate the malice or recklessness of reporter Newcome, because he published things told to him by St. Pierre, who did not have firsthand knowledge. The people who had firsthand knowledge of the incidents denied them.

Sardella, a deputy sheriff who was assisting Newcome with his investigation, St. Pierre, and Newcome, were all close personal friends (B 2-3). Newcome testified at the trial that he was first advised about the alleged \$1,000.00 bribe solicitation by either Sardella or St. Pierre (B 4). He knew at this time of the feud between St. Pierre and the plaintiff (B 1). After Newcome received this information from Sardella or St. Pierre, he discussed it with Wilcox, who said that he (Wilcox) received the information from his employee Bernard (B 5-6). It is undisputed that at all times material, Bernard was the only one who had firsthand information about this. All of the others received the information from Wilcox, and Wilcox received it from Bernard.

Prior to printing the story about the alleged \$1,000.00 bribe solicitation Newcome did talk to Bernard and Bernard told Newcome unequivocally that the incident never occurred (B 7-8). Newcome also admitted that Wilcox was rather evasive about the entire matter in his discussions with Newcome (B 9).

The above is Newcome's version of what occurred in this case, which is that having full knowledge that Bernard categorically denied the allegation (B 7-8) that

St. Pierre, the source of his information, had a pre-existing feud with Adams (B 1), and Wilcox having been evasive (B 9), he went right ahead and stated in his newspaper that the plaintiff solicited a bribe from Bernard for \$1,000.00.

Bernard's deposition was read into evidence. He testified on deposition that Adams did not try to solicit a bribe from him (B 10) and he further testified that he did not tell Wilcox that Adams had attempted to solicit a bribe (B 11). He further testified that Adams never did anything dishonest in his business dealings with Bernard (B 12).

Wilcox, whom Bernard allegedly advised about the bribe solicitation, confirmed Bernard's testimony that this never occurred. Wilcox further testified that he never passed any such information on to Sardella, St. Pierre or Newcome (B 13-15).

MIRROR INCIDENT

The defendant stated that the plaintiff allegedly purchased some extra mirrors from a builder for \$150.00 and then asked for a cash refund without returning the mirrors. The facts show the story to be untrue. Again Newcome's alleged source of information for this was from Wilcox, who had been given this information by his employee Bernard (B 16). Wilcox testified that they had replaced some mirrors in a model apartment and had made it known that these mirrors were for sale to anyone for \$150.00 (B 15, 17-18). Adams inquired about purchasing the mirrors, the sale was agreed to and Adams paid for the mirrors by check (B 18-19). Bernard never told Wilcox that Adams had asked for his money back (B 20). Bernard

did suggest to Wilcox that since Adams had gone through so many problems on this job that perhaps they should refund the money to the plaintiff, however no such refund ever occurred nor was it requested (B 19-20).

Bernard testified that the mirror transaction was an arm's-length bona fide transaction and that the incident, as published in the newspaper, was not true (B 21-22).

\$2,000.00 FOR EXTRA WORK

The third incident was the alleged request by the plaintiff for Mayor Miller to write him a personal check for \$2,000.00 for extra work which Adams was already being paid for. Miller testified that this was a gross distortion of the facts. The Town of Indian River Shores had a contract with the City of Vero Beach to use the city's building inspection department (B 23). Because of the unprecedented growth of Indian River Shores the municipalities were attempting to work out an arrangement to pay for the extra work of the city's building inspection department (B 24). Arrangements were being discussed for Adams to receive \$2,000.00 a year and his secretary to receive \$400.00 a year for additional work which he was having to perform for Indian River Shores. It was all official and openly discussed in town and city meetings. Miller either gave Newcome copies of the file or told him where he could find all of this information in the City files (B 25-28).

A key witness for the plaintiff on the question of malice was DiBassie, described as LeBase in the article (B 29, 30). DiBassie allegedly said that building was a "rotten goddamn business". DiBassie testified at the trial that he made no such statement (B 31, 32). He

was a contractor who had never had any problems with Adams and never had any reason to question his honesty (B 33).

DiBassie testified that when he discussed this investigation with Newcome, Sardella and St. Pierre, the three of them made such statements as: "They were going to get him, they had some things on him." (B 34). "They were going to take Don Adams to task." (B 34). They were going to "put him in jail" (B 34).

DiBassie testified that he gave them absolutely no detrimental information about Adams because he had none (B 31). He confirmed that from his observation the St. Pierre-Adams pre-existing dispute was certainly a factor in this newspaper investigation by Newcome (B 35, 32).

The Fourth District Court of Appeal affirmed and the opinion is now reported at 336 So.2d 1197. The Court concluded on page 1199:

"The jury could properly conclude that every time Newcome went to the sources of the information concerning alleged wrongdoing (Bernard and Miller, the only persons with personal knowledge of the facts), they told Newcome the statements were untrue. This did not happen with just one of the events but with all three! In addition, Newcome knew his source St. Pierre had a feud going with appellee, so he was on notice as to his questionable credibility. Finally, DiBassie, who, according to Today, accused appellee of improper conduct, denied making any accusation. On the other hand he testified Newcome and Sardella said they were going to get appellee and put him in jail.

In the face of all those red flags flying, Newcome wrote the articles complained of, imputing criminal

conduct to appellee. The editorial staff of the newspaper, after giving full consideration to their content and the possible libelous implications arising therefrom, decided to print the articles.

As we view the credible evidence which the jury had before it, there is clear and convincing support for a finding that appellants exhibited a reckless disregard of whether the charges were true or false, i.e., that they published the articles with a high degree of awareness of the probable falsity of the statements involved ..."

ARGUMENT

POINT I

The Evidence Adduced at Trial Below Does Not Support the Judgment Against Petitioners Under the Actual Malice Test of *New York Times v. Sullivan*.

There is no dispute about the law applicable to the plaintiff who is a public official. The criteria are set forth in *New York Times v. Sullivan*, 384 U.S. 701, 376 U.S. 254, 11 L.Ed.2d 686 (1964). In that case this Court stated on page 725:

"The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

We have set forth the facts in detail previously. On the appeal of this case to the Fourth District Court of Appeal, that court wrote an opinion which is reported at 336 So.2d 1197, and summarized the evidence on page 1199 of the opinion as follows:

"The jury could properly conclude that every time Newcome went to the sources of the information concerning alleged wrongdoing (Bernard and Miller, the only persons with personal knowledge of the facts), they told Newcome the statements were untrue. This did not happen with just one of the events but with all three! In addition, Newcome knew his source St. Pierre had a feud going with appellee, so he was on notice, as to his questionable credibility. Finally,

DiBassie, who, according to Today, accused appellee of improper conduct, denied making any accusation. On the other hand he testified Newcome and Sardella said they were going to get appellee and put him in jail.

In the face of all those red flags flying, Newcome wrote the articles complained of, imputing criminal conduct to appellee. The editorial staff of the newspaper, after giving full consideration to their content and the possible libelous implications arising therefrom, decided to print the articles.

As we view the credible evidence which the jury had before it, there is clear and convincing support for a finding that appellants exhibited a reckless disregard of whether the charges were true or false, i.e., that they published the articles with a high degree of awareness of the probable falsity of the statements involved (*Garrison v. Louisiana*, 379 U.S. 64, 35 S.Ct. 209, 13 L.Ed.2d 125 (1964)) and with serious doubt as to the truth of the publication (*St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968))."

Defendants recognize on page 23 of their brief that there were conflicts in the evidence as to whether their reporter Newcome had been given this information by his alleged sources, since the sources denied it. Defendants argue that under this conflicting factual situation there is not a sufficient basis for a finding of malice or reckless disregard. It is apparently defendants' position then, that where the newspaper reporter says he was advised by others of the defamatory action, and the others deny advising the newspaper reporter of such information, the public official cannot recover. This would mean that a public official could never recover for libel whenever the newspaper reporter says he received the information from some-

one else, regardless of what the someone else testifies to. In other words the defendants wish to take away the jury's function of determining who is telling the truth in a situation where the evidence is conflicting. This would mean that unless a newspaper reporter admitted he was being malicious or was recklessly disregarding the public official's rights, the public official could not recover.

POINT II

The Award to Plaintiff of \$214,000, Including \$100,000 in Punitive Damages, Impairs the Exercise of First Amendment Freedoms to the Extent of Imposing Self-Censorship, Is Unsupported by the Evidence, and Does Not Properly Promote a Compelling State Interest.

Under this point defendants apparently contend that both the compensatory and punitive damage awards are excessive. The excessiveness of both of the awards has been reviewed by the Fourth District Court of Appeal and the Supreme Court of Florida. Whether or not those awards are supported by the evidence or are excessive under Florida law is of no concern to this Court. The real argument being advanced by defendants under this point is that punitive damages should be abolished in defamation cases. This Court has declined to do that previously. In *Gertz v. Welsh*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), this Court recognized that the award of punitive damages is appropriate where malice or reckless disregard have been shown. Prior to that, in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971), this Court expressly declined to eliminate punitive damages in defamation cases.

We would further respectfully suggest that even if this Court were to decide that the law should so drastically

be changed, this would not be the proper case in which to do so. In the present case, as our statement of facts and the quoted portion of the opinion of the Fourth District Court of Appeal demonstrate, there was ample evidence from which the jury could have found that reporter Newcome was not telling the truth and in fact had actual knowledge that the material which he published was not factual. His alleged sources testified that they did not tell him these things which he attributed to them. There was really no basis in this record for the jury to have found the defendants not guilty. On the evidence in this case, the jury really only had the alternatives of deciding whether reporter Newcome knew the published information was untrue, or whether he simply exhibited a reckless disregard of whether it was true or false. Under either circumstance the law is well established that punitive damages are recoverable and defendants have suggested no good reason why the law should be changed.

CONCLUSION

One can hardly think of a more clear-cut case of malice or reckless disregard than the present factual situation presents. The petition for certiorari should be denied.

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RESPONDENT'S APPENDIX

TRANSCRIPT

[170] A. No, I don't think it was up to me to continue meeting. I had statements from Mr. Wilcox that it had occurred. I had four from Mr. St. Pierre and Mr. Sardella that he had told the same thing to them on separate occasions within the presence of two people. He confirmed it to me and then Bernard said it hadn't happened.

I think three people was sufficient to make me—plus it did, plus he was willing to go along with setting up a controlled payoff and I couldn't think of any reason why a man of Mr. Wilcox' position would be willing to go through all of the trouble of a controlled payoff if he didn't think it would happen.

Q. Let's back up a step there, Mr. Newcome. You already know that Mr. St. Pierre and Mr. Adams were not getting along, right?

A. Correct.

Q. You know there are hard feelings, at least from the standpoint of Mr. St. Pierre?

A. Yes.

Q. You already know that Mr. Sardella is a very close personal friend of Mr.— Mr. St. Pierre, don't you?

A. Yes, sir.

Q. Okay, then, you talked to a man who is a * * *

* * *

[79] * * * they made any changes or grammatical reasons or—they would consult me.

Q. They are the ones that have the last word?

A. Yes, sir.

Q. And they are the ones that Mr. Baker and some other editors, they are the ones who approved your publication of the articles about my client which are complained of in the Complaint?

A. Yes, sir.

Q. Now, I would like to go into the articles and the way you got involved in this particular situation, Mr. Newcome, but before we do, I want to establish some—some relationships, if I can, with you.

Now, you heard my opening statement where I said that you and Mr. St. Pierre are close?

Mr. Holland: Object to this long narrative by Counsel.

The Court: I believe the editorial comment is well taken. Just get the question.

By Mr. Hazouri:

Q. Let me establish this, Mr. Newcome: You and Mr. St. Pierre are close personal friends?

A. Yes, sir.

Q. You socialize in your home and from time to time?

[80] A. Yes, sir.

Q. And when you first came to Vero Beach, you rented a house from him; is that correct?

A. Yes, sir.

Q. Is that basically how you got to know Bernie St. Pierre?

A. Yes, sir.

Q. And that friendship has solidified over the years?

A. Yes, sir.

Q. And you were very close personal friends at the time of the printing of the articles about my client?

A. Yes, sir.

Q. Now, as far as your relationship with Mr. Sardella, would you classify that as a close friendship, would you not?

A. Yes, sir.

Q. You socialize and he socializes with you from time to time?

A. Yes, sir.

Q. You visit in his home and vice versa?

A. Yes, sir.

Q. And that would be the case prior to publication of the articles about my client?

* * *

[166] Mr. McKinley: Excuse me, I object to the question insofar as something Mr. Sardella told Mr. Newcome. I think Mr. Newcome's testimony is Mr. St. Pierre told him.

The Court: Overruled. Do you understand the question?

The Witness: Yes, sir.

The Court: You may answer.

The Witness: I confirmed it to my satisfaction.

By Mr. Hazouri:

Q. When you say "confirmed," there wasn't any question that he said, "Yes, that occurred"?

A. I don't recall his words. He was evasive, as I said, in the story. He didn't get into great detail, but he said enough that he confirmed what I had learned from Mr. St. Pierre and Mr. Sardella.

Q. Well, how evasive was it? Was it evasive enough that you didn't know whether he was talking about a hundred and fifty dollars for mirrors, as opposed to doors?

A. No, sir.

Q. How evasive?

A. I mentioned a hundred and fifty dollars. We talked about doors, we talked about a hundred and fifty • • •

[1056] A. Yes, sir, some of it.

Q. Now, taking these subjects here very briefly and very quickly, Mr. Newcome, one by one here as to the statement by Mr. DiBassie, about contracting in the Vero area, "rotten"—excuse me—"goddamned business," would you repeat briefly your sources for that? Was that your—

A. Myself in the presence of Joe Sardella.

Q. All right, sir. Now, the statement of Mr. Wilcox quoted in the newspaper which I have just mentioned to the witness, St. Pierre, as to those statements; what were your sources?

A. Mr. Wilcox confirmed to me—I first discussed it with Mr. Sardella, or St. Pierre, and learned what Mr. Wilcox had told them about the attempted shakedown.

Q. Did you report accurately what they told you he said?

A. Yes, sir.

Q. All right, and later you saw Mr. Wilcox yourself?

A. Yes, sir.

Q. And what, if anything, did he confirm?

A. He denied that, that there had been an offer from his superintendent to Mr. Adams of \$500. He said

[1057] he, he wanted to make it perfectly clear and intended to make it clear with Mr. Sardella, but he said there was request of a thousand dollars from Mr. Adams.

Q. And that had been reported to him by his superintendent, Mr. Bernard?

A. Yes, sir.

Q. Did he deny in any way having the conversation with Mr. Sardella and Mr. St. Pierre in which he said essentially the same thing? A. No, sir, he confirmed that clearly.

Q. Were these sources then yours, Sardella's and St. Pierre's, the basis for your putting this in the article?

A. Yes, sir.

Q. You also got a denial of this, did you not, from Mr. Bernard?

A. Yes, sir.

Q. What did you feel was the truth of the matter from your investigation?

Mr. Hazouri: I object, calls for opinion and conclusion.

The Court: Objection overruled. Do you understand the question?

The Witness: Yes, sir. I had no reason to doubt that Mr. Wilcox had had this discussion * * *

* * *

[168] A. Yes, sir.

Q. And when did this conversation occur?

A. With Mr. Bernard, I believe it was Saturday, the day—Friday or Saturday prior to the Sunday publication; it would have been about June 9 or 10.

Q. Couple of days before publication?

A. Yes, sir.

Q. And Mr. Bernard denied those charges, did he not?

A. Yes, sir, he did.

Q. In other words, he said he didn't tell Mr. Wilcox that Mr. Adams had tried to make a shakedown for a thousand dollars?

A. That's correct.

Q. And he didn't—he denied that Mr. Adams approached Mr. Bernard about the mirrors and asked for the money back?

A. That's correct.

Q. There wasn't any question about that denial, was there?

A. No, sir.

Mr. Holland: Objection, argumentative.

The Court: Objection overruled.

By Mr. Hazouri:

Q. You went ahead and printed that article,

[169] didn't you?

A. Yes, sir.

Q. Now, did you feel that you gave equal and fair coverage to what Mr. Bernard had said?

A. Yes, sir.

Q. You feel that was fair?

A. Yes, sir.

Q. Do you recall what you said about what Mr. Bernard said?

A. Yes, sir, I said that he had denied the allegations. I don't remember the words that I used at that time.

I must have talked to Bernard all of twenty minutes on the job, very brief. He was busy, he had to go. I just wanted some confirmation or denials as to whether this had happened, and he said it had not, and I printed what he said.

Q. When you talked to him and he said, "No," he made these denials, wasn't that pretty significant to you?

A. Yes, sir.

Q. Did you feel that maybe it may be—might warrant another meeting with Mr. Bernard or another meeting with Mr. Wilcox to find out who was telling the truth?

• • •

[171] * * * little bit evasive, Mr. Wilcox, who wouldn't be panned down, right?

A. Yes, sir.

Q. And then you talked to Mr. Bernard who makes an absolute denial of what you are going to print?

A. That's correct.

Q. And you felt that was sufficient to print the article that a building official, my client, Mr. Adams, solicited a one thousand dollar bribe and asked for really another hundred and fifty byway of mirrors?

A. Yes, sir.

Q. Did you go back and try to check with Mr. St. Pierre to say, "Well, Bernie, Mr. Bernard denies that; what have you got to say about that?"

A. I don't recall any such conversation with him.

Q. Was Mr. Sardella available for you to talk to, or was he in the hospital?

A. He was in the hospital at the time, yes, sir.

Q. Did you talk to him about the conflict?

A. Not then. I did later.

Q. After you published articles?

A. Yes, sir, I believe it would have been after.

Q. And you made no further attempts to contact Mr. Wilcox after the denial?

• • •

[11] Q. The accusation was he had attempted to shake you down on this project. Do you remember that accusation being made?

A. (Witness nodding head indicating affirmative reply.)

Q. Is that true?

A. No, it isn't true.

Q. Has Mr. Adams ever--Mr. Adams did not solicit a \$1,000.00 bribe from you at any time?

A. No bribe at any time.

Q. Now there was some problem, I remember, about some fire rated doors that were being put on in The Spires Condominium; remember that?

A. Yes, I remember that.

Q. Was that strictly a dispute between Mr. Adams' interpretation of the Building Code and your understanding of the Building Code?

Mr. Holland: Object to the form of the question as leading and suggestive.

Q. Let me withdraw the question and rephrase it this way. What was the nature of that particular dispute?

A. The plans called for certain fire ratings for the doors and we went ahead and bought doors ahead of time. They were in stock down in West Palm Beach. When it came time to put the doors in Mr. Adams said Code-wise they were the wrong fire rating, we needed * * *

* * *

[14] A. None.

Q. Now, do you know whether or not--let me ask you this: Did you ever tell Mr. Wilcox that, that Mr. Adams had solicited a bribe?

A. Never.

Q. Did you ever tell Mr. Newcome that?

A. No. I never talked to him about anything of that nature.

Q. You never did tell him that?

A. No. (To Mr. Newcome) I think I talked to you one time, but I don't think it was anything about a bribe or anything.

Mr. Holland: The witness is speaking to Mr. Newcome, who is present.

Q. You did not tell Mr. Newcome; is that what you are saying?

A. No, I did not tell Mr. Newcome.

Q. How about anybody from Today News, did you ever tell them that?

A. No.

Q. Did you ever tell anybody that?

A. No. Wasn't true.

Q. Now you also, I assume, recall some--in one of these articles that was printed, I believe on that June 11th of 1972, in the Today's newspaper, the * * *

* * *

[18] Q. What did Mr. Newcome talk to you about? Do you recall?

A. I don't remember right now.

Q. Okay. All right. Now, do you know anything about an attempt on the part of Mr. Newcome and Mr. Sardella to set Mr. Adams up for an exchange of a thousand dollars?

A. No. Not to me.

Q. No one ever suggested that to you?

A. No.

Q. At any time that you have been here in Vero Beach and been working on this Spires Condominium, in your contact with Mr. Adams has he ever done anything or suggested anything to you of a dishonest nature concerning his position as Building Inspector, and his control over the inspections of the Spires Condominium?

Mr. Holland: Object to the form of the question, and it calls for a conclusion.

Q. Go ahead, you can answer the question.

A. No.

Q. Okay. Do you know a gentleman here in Vero Beach by the name of Bernard St. Pierre?

A. I just heard of him, or seen his signs.

Q. You don't know him personally?

[505] * * * I couldn't make that decision, I felt that should be made by Mr. Taylor, but that I would take his request to Mr. Taylor.

Q. Did Mr. Sardella advise you as to whether or not he was representing any type of Grand Jury involvement or anything such as that?

A. No, sir, I don't remember him making any such statement that he represented the Grand Jury.

Q. Did he identify himself as being a deputy sheriff?

A. Sir, he identified himself as being with the Sheriff's Office, yes, sir.

Q. Now, was that the sort of sum and substance of the first conversation with Mr. Sardella?

A. Yes, I think that basically was it.

Q. Now, did you at that conversation tell Mr. Sardella that Mr. Bernard had approached—that Mr. Bernard had been approached by Mr. Adams and asked that Mr. Adams pay him a thousand dollars as a bribe? Did you tell Mr. Sardella that, that that's what Mr. Bernard had said?

A. I don't remember making any such statement as to quoting Mr. Bernard that Mr. Adams had asked him for a thousand dollars.

Q. That's clear in your mind?

[506] A. Yes, sir.

Q. Now, then, did you then make any inquiry of your employer or your head, the president, Mr. Taylor?

A. Yes, sir.

Q. About going along with Mr. Sardella?

A. Yes, sir.

Q. And did Mr. Taylor approve or disapprove of that?

A. He said he would discuss it with the company's attorney, but his official feeling was that he could not become involved in that.

Q. And did he later advise you that he disapproved of such a plan?

A. Yes.

Q. Did Mr. Sardella contact you? Was the understanding that Mr. Sardella would get back in touch with you to see if Mr. Taylor would be agreeable to it?

A. Yes, sir.

Q. And did he in fact get back to you?

A. Yes.

Q. And you in fact informed him that Mr. Taylor disapproved of any such involvement?

A. Yes, sir.

Q. Did Mr. Sardella try to—did he talk to you again and try to get you to go along with him in any

[507] fashion after you told him that Mr. Taylor wouldn't go along with it?

A. Sir, I believe he asked to reconsider it or give additional thought or something of that nature, and if there was any change in our position, to get in touch with him, something along this line.

Q. Was there any change?

A. No, sir.

Q. Did you ever get back in touch with Mr. Sardella and state that Mr. Bernard was—that Mr. Bernard had been told by Mr. Adams that you wanted a thousand dollars? Did you at any time?

A. No, sir.

Q. Now, during the time that you had your first conversation with Mr. Sardella, did the question of the mirrors come up?

A. Yes, it did.

Q. Now, I don't want you to tell me what you told Mr. Sardella about the mirrors yet, but I would like for you to explain to the jury what the mirrors were and what that was all about.

A. On the site where the towers were being built, we had a model apartment, and the model apartment had been in existence roughly a year, and we were coming up on a selling season, another season starting which * * *

(c) Wilcox said he was against his firm becoming involved in a payoff and offered to let law enforcement officers observe his foreman handing over marked bills to the city official for the purpose of making an arrest.

(d) On another recent occasion Wilcox said Adams expressed interest in three smoked mirrors in the Village Spires. Adams inquired as to the cost and was told by Bernard the contractor paid \$150 and if Adams wanted them he could purchase them at that price. Adams gave a personal check for \$150 to Bernard and took the mirrors. The next day he returned and told Bernard he wanted his \$150 refunded in cash. He did not return the mirrors.

3. 'Favoritism', Hawkins Claims;

(a) William Hawkins, owner of Hawkins Publishing Co., accuses Adams of showing favoritism to certain Vero Beach contractors.

4. Some Builders Laud Adams;

(a) Others maintain Adams has a different building code or set of rules for different contractors.

B. That on the day of June 13, 1972, the defendant, the TODAY NEWSPAPER, acting by or through its agents, servants or employees, acting within the scope and course of their employment, wilfully, falsely and maliciously composed and published in said newspaper, an article of which the following false and malicious statements were made in reference to plaintiff DONALD F. ADAMS:

1. How to Be A Builder;

(a) John DuPuis learned the fastest and simplest route to becoming a general contractor in Vero Beach was to hire an attorney. DuPuis told TODAY he took the examination for a license three times, failing each time. DuPuis went to attorney Robert Jackson for help. Jackson telephoned Donald F. Adams, City Building Department director, and

[508] * * * we felt would start around Christmas-time and go through about Easter.

And we decided that since people had been to Vero Beach and seen the model, that we—maybe it would be a good idea to have a new, fresh look for them when they came back the next season.

So I decided and received approval from Mr. Taylor to completely remodel and refurnish the apartment.

On one wall of the apartment, dining room wall, there were three mirrors put together in one piece, and I decided to replace those mirrors with a more expensive mirror. We upgraded the prices of the apartments, upgraded the furniture, and I wanted to upgrade the mirrors.

Q. All right, sir. Now, did you set a price for what the mirrors would cost?

A. I contacted the people that were going to be furnishing us new mirrors, and as I recall, the original installation of those mirrors was around \$300, and that company that was replacing them said they would give us a hundred dollars credit, and I didn't feel that credit they were giving us was as much as we should receive, so I decided that I would offer them, just offer them for sale for a hundred

and fifty [509] dollars, and which is what I did.

Q. All right, sir. Now, did you learn that Mr. Adams was interested in the mirrors?

A. Yes, sir.

Q. And did you advise—who did you learn it from, first?

A. Mr. Bernard.

Q. And did you advise Mr. Bernard that they were for sale but for sale at a hundred and fifty dollars?

A. Yes.

Q. And would that have been for sale for a hundred and fifty dollars for anybody in Vero Beach?

A. Yes.

Mr. Holland: I object to Counsel leading the witness.

The Court: I believe the objection is well taken. I will ask Counsel to please refrain from leading his own witness.

Mr. Hazouri: Thank you, Your Honor, I will try not to do that.

By Mr. Hazouri:

Q. Now, would you tell us what transpired between your company and Mr. Adams as to the purchase of those mirrors?

A. Well, when Mr. Bernard said that Mr. Adams

[510] wanted the mirrors and would pay the hundred and fifty dollars for them, I said I wanted him to pay for them by check so it could be deposited in the company account.

I told him that I would be willing when they delivered the new mirrors to have them use the truck to take the other ones off and put them on the truck and deliver them to Mr. Adams' residence, and so Mr. Adams did give us a check for the mirrors.

They were removed, put on the truck and delivered to his residence.

Mr. Hazouri: Your Honor, I would like to put into evidence at this time that cancelled check, the original.

Mr. Holland: No objection.

The Court: Hearing no objection, they will be received and marked Plaintiff's Exhibit 12.

(Whereupon, Plaintiff's Exhibit 12 was marked.)

By Mr. Hazouri:

Q. And did you so receive such a check?

A. Yes, sir.

Q. Now, to your personal knowledge, did Mr. Adams come back to your company and ask for his hundred

[511] and fifty dollars back without giving the mirrors back?

A. He did not come to me.

Q. Now, did Bernard ever report any such thing to you that Mr. Adams had come back and asked for his hundred and fifty dollars back but wasn't going to give the hundred and fifty dollars back?

Mr. Holland: Objection to leading.

The Court: The objection is overruled.

The Witness: Mr. Bernard did state to me that he thought in consideration of the problems that Mr. Adams had gone through on the job, because it was unpopular, that maybe that the money should be refunded to him.

By Mr. Hazouri:

Q. Did he say that Mr. Adams asked that it be refunded?

A. I don't remember that he did, but I can't say that he didn't.

Q. Did you tell Mr. Sardella that he had asked for it back?

A. I tried to relate to Mr. Sardella the conversation about the refund of the money.

Q. Was there ever a refund of the money, to your knowledge?

A. No, sir.

* * *

[15] * * * accusations that were made that Mr. Adams had discussed with you the mirrors, these smoked glass mirrors,— I think smoked mirrors—that had been in one of the sort of model apartments?

A. That's right.

Q. And the accusation was made that Mr. Adams wanted those mirrors and that he paid \$150.00 for them, but then he wanted it back, sort of an under the table refund. Do you remember that accusation?

A. I remember the accusation.

Q. Now, did that ever happen?

A. No, it didn't. Mr. Adams paid by check, \$150.00, which was sent down to the main office, for those mirrors.

Q. Do you remember the circumstances under which these mirrors were offered to Mr. Adams and how he paid for them?

A. We were going to do some remodeling. We were going to take those mirrors out and put different type mirrors on the wall. And he stated that he would like to have the mirrors. And I don't know how the price came up, \$150.00, because I didn't quote any price, but I think \$150.00 was offered for the mirrors. I don't know who agreed to sell them to him but I know he had paid for them because I saw the check.

* * *

[18] Q. Did he at any time come back to you and ask you to give him the \$150.00 back?

A. No.

Q. To your knowledge, your own personal knowledge, did he ever do that to anybody at The Spires that was under your supervision?

A. Not to my knowledge.

Q. Now, did you ever tell Mr. Wilcox that Mr. Adams had expressed interest in these smoked mirrors and wanted to get them and pay \$150.00, and you give him the \$150.00 back?

A. No.

Q. Did you ever tell that to anyone at all?

A. No one.

Q. Did you ever discuss that particular topic about the mirrors with Mr. Newcome?

A. No.

Q. Did you talk to anybody from Today newspaper about that?

A. No. If I had, I don't remember. I really don't remember. If I had it would have been only what I just told you.

Q. That Mr. Adams paid \$150.00 for them and didn't ask for the money back?

A. That's right. I remember talking to Mr. Newcome but . . .

. . .

[548] . . . Mr. DuMars concerning the matter of overtime in reference to Mr. Adams and his secretary?

A. That's right.

Q. Now, Mr. Miller, would you relate to the jury the circumstances surrounding this letter?

A. Well, you remember this is about two years ago, and I'll, best of my knowledge—

Q. Best of your recollection.

A. Three, four years ago we made a—even before Mr. Adams came with the City—we had a contract with the City of Vero Beach with a former building official named Joe Caleen.

Then under the ordinance, resolution, when they changed building officials and we had to make it with a new building official.

Now, this is ten years ago and then—I don't recall, I imagine Mr. Adams in the building—what year did you say he went in?

Q. Nineteen sixty-seven.

A. Sixty-seven, and we had to make a new deal then. And in '67 to about '69, we didn't have too much business. We had a net worth, I mean net valuation of about four million dollars.

Then about '61, '62, it just—

Q. Sixty-one?

[540] A. Seventy-one, '72, it jumped up to around somewhere between fifty and sixty million, so between those two or three years the place just mushroomed. In other words, about twelve or fifteen times.

So naturally the Building Department, I had to hire more people because we were facing three, four million dollars worth of permits every six, eight months.

Q. All right, sir.

A. And it got to the point between the growth in Vero Beach and Indian River Shores and in the County, that it was getting to be five and six weeks before we could get a permit out.

Q. All right, sir, and this you attributed to increase in growth?

A. Yes, sir. I went down there to see Don and said we have to do something about this, and he said, "Hell, I can't do nothing about it; I'm working night and day now. What do you want to do about it?" And I said, "Well, can you work Saturdays and Sundays or overtime and get these permits out?"

He said, "Yes, we could do this, we could work out some other arrangement."

But after Don or I neither one could work on the arrangement, because it all had to be through the * * *

* * *

[554] * * * public record that you referred to?

A. He came to my garage. I was out in the garage working on the tractor.

Q. Had you called him to come see you?

A. No.

Q. Had you told anybody to have him get in touch with you?

A. No.

Q. Did you have any—had you called Mr. St. Pierre?

A. No. I don't even know Mr. St. Pierre.

Q. Okay, did you tell anybody to tell Mr. St. Pierre to get ahold of you?

A. No, sir.

Q. No? So Mr. Sardella showed up at your garage one day?

A. That's right.

Q. And did he tell you why he was there?

A. Yes.

Q. Can you tell me what he told you?

A. He told me he was investigating Don Adams.

Q. All right, sir, and did he discuss with you the question of this matter, which is of public record, this letter and contents?

A. I told him that it was all on public record.

[555] Q. Did you tell Mr. Sardella that Mr. Adams was trying to shake the City of Indian River Shores down for work that he wasn't—for money he wasn't entitled to?

A. I did not.

Q. Did you tell him it was any form of payola?

A. No, sir.

Q. Do you recall whether or not Mr. St. Pierre was there during this conversation?

A. No, he was not.

Q. Just between you and Mr. Sardella?

A. Yes, and my Chief of Police was there, but he didn't hear the conversation; he was on the other end of the tractor, and Joe and I walked up.

Q. And did you direct him to where he could get all of the information that he wanted, that was a matter of public record?

A. You've got to understand, it was in our minutes. City Council.

The Court: The question was, did you direct him where he could find this?

The Witness: That's right, yes, sir, I said it's in all of the minutes.

By Mr. Hazouri:

Q. Did you have any further contact from Mr.

[556] Sardella in relationship to that?

A. One and only time I talked to him.

Q. Did you have any contact with Mr. Newcome?

A. Yes.

Q. Was that before or after Mr. Sardella?

A. I don't remember. It was about the same time.

Q. Didn't come—

A. You realize we are talking about three, four years ago.

Q. They didn't come together?

A. No.

Q. Did anybody come with Mr. Newcome, or was he by himself?

A. By himself.

Q. And what was Mr. Newcome doing at your house? Did you call him and ask him to come?

A. Duke called me, as well as I recall. I could be wrong.

Q. What is your best recollection?

A. I remember Duke came up to the house, it was about lunch time, and I said come on in and have lunch, and my wife cooked up a steak.

Q. And what was the purpose of Mr. Newcome being there?

A. Mr. Newcome told me he was investigating Don

[557] Adams for a news story.

Q. And did he talk to you about it, the contents of the letter of August 24th?

A. Uh, I don't know. I think I gave him copies of the whole file. I—my office was there in the house, I think I gave him copies or told him where he could find them.

Q. And did you tell Mr. Newcome that money which—the four hundred dollar figure was an attempt by Mr. Adams to shake down the Town of Indian River Shores?

A. Nope.

Q. Did you tell him it was any type of payola?

A. No.

Q. Did you speak in a derogatory fashion about Mr. Adams in any way during your conversation with Mr. Newcome?

A. No.

Q. Or with Mr. Sardella?

A. No.

Q. During your dealings with Mr. Adams, have you had any reason to question his honesty in the way of handling his official capacity?

A. No, we still do business together.

Q. You are still sort of his employer in a sense?

A. Well, I call him two, three times a week when

D. That on the day of June 11, 1972, the TODAY NEWSPAPER, acting by or through its agents, servants or employees, acting within the scope and course of their employment, wilfully, falsely and maliciously composed and published in said newspaper, several articles of which the following false and malicious statements were made in reference to plaintiff DONALD F. ADAMS:

1. 'Blacklisted' Vero Contractors Claim Shake-downs, Harassment;

(a) In the building department of the City of Vero Beach, "You either play the game or you're out of business."

(b) One contractor told TODAY that Donald F. Adams, director of the City-County Building Department attempted to shake his superintendent down for \$1,000.

(c) The mayor of Indian River Shores told TODAY that Adams attempted to persuade the mayor to write a personal check to Adams each year for \$2,000 and another for \$400 to Adams' secretary for "extra work" which town building inspections caused Adams - work Adams was already being paid for.

2. 'Rotten Business,' LeBase Charges;

(a) Bob LeBase, Vero Beach drywall contractor, describes construction work as "a rotten goddamn business." City building inspectors can put a man out of business if they wish, the contractor said. Don Wilcox, executive Vice president and project director for the Village Spires Condominium on the beach, told TODAY that Donald F. Adams, city-county building and zoning director of Vero Beach, attempted a \$1,000 shakedown on one of Wilcox' projects.

(b) Wilcox walked away from Adams, but quoted his foreman, Art Bernard, as saying he asked Adams what they would have to do to keep the project moving. Bernard told Wilcox it would take \$1,000 paid to Adams personally, Wilcox told TODAY.

(c) Wilcox said he was against his firm becoming involved in a payoff and offered to let law enforcement officers observe his foreman handing over marked bills to the city official for the purpose of making an arrest.

(d) On another recent occasion Wilcox said Adams expressed interest in three smoked mirrors in the Village Spires. Adams inquired as to the cost and was told by Bernard the contractor paid \$150 and if Adams wanted them he could purchase them at that price. Adams gave a personal check for \$150 to Bernard and took the mirrors. The next day he returned and told Bernard he wanted his \$150 refunded in cash. He did not return the mirrors.

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(a) William Hawkins, owner of Hawkins Publishing Co., accuses Adams of showing favoritism to certain Vero Beach contractors.

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(a) Others maintain Adams has a different building code or set of rules for different contractors.

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(a) John DuPuis learned the fastest and simplest route to becoming a general contractor in Vero Beach was to hire an attorney. DuPuis told TODAY he took the examination for a license three times, failing each time. DuPuis went to attorney Robert Jackson for help. Jackson telephoned Donald F. Adams, City Building Department director, and

[571] Q. Well, now, did you encourage Mr. Newcome by giving him information against Mr. Adams?

A. I wouldn't give him any information.

Q. Did you give him any information?

A. No.

Q. Did you give Mr. Sardella any information or encourage him on information that would be detrimental to Mr. Adams?

A. No, I didn't give any information. I said, "Fine, if he's on the take, getting money, go get him; you have my wholehearted support." Unfortunately, I couldn't give him anything.

Q. Did they give you any information? Did Mr. Newcome give you any information about what he had turned up on Mr. Adams?

A. Everything was very vague, and I don't really recall what it was.

Q. How about Mr. Sardella?

A. Likewise.

Q. And Mr. St. Pierre likewise?

A. Uh, Bernie wasn't present hardly at all with any conversations that I had, really, to do with Mr. Sardella. I only saw Bernie one time in that particular lounge.

Q. So primarily it was between you and Mr. New-
...

...

[575] Q. Now, did you in reference to Mr. Adams, did you ever make the statement to Mr. Newcome that the Building Department of the City of Vero Beach was a—pardon my language—rotten god-damned business and he could put you out of business if you don't play the game, or something to that effect.

Mr. Holland: Objection.

The Court: Objection overruled. Do you understand the question?

The Witness: Yes, sir, I do.

The Court: Answer if you can.

The Witness: No, I did not make that statement.

The Court: Did you say anything along those lines?

The Witness: Not to my recollection, definitely no, I did not.

By Mr. Hazouri:

Q. That would have been my next question.

Now, did you have any further conversations that you can recall details between yourself and Mr. Newcome and Mr. Sardella about Mr. Adams beyond what you have recalled thus far?

A. Yes, I had several conversations and throughout our conversations I tried to impress upon Mr. New-

* * *

[567] * * *involved in that type of work in Vero Beach?

A. Yes.

Q. Did you have your own company and your own employees?

A. Yes.

Q. Now, did you ever have occasion to work for Bernie St. Pierre?

A. Yes.

Q. Did you have occasion to work with other contractors?

A. Yes.

Q. You were in the subcontracting business?

A. Right.

Q. Now, Mr. DiBassie, during the time that you were or had been in Vero Beach, have you had contacts with Mr. Donald Adams as Building Inspector?

A. Yes, I have.

Q. And during the time that you have had contact with Mr. Adams, have you ever had any problems of harassment from Mr. Adams?

A. No, sir.

Mr. Holland: I object to the form of the question as harassment calls for a conclusion.

The Court: Objection overruled.

* * *

[570] A. Yes.

Mr. Holland: Object to the leading question.

The Court: Objection overruled. Proceed.

By Mr. Hazouri:

Q. Will you tell me what Mr. Newcome was asking you and/or telling you during this conversation?

A. It's been a long time, I can't recall exactly. Best of my recollection, uh, Mr. Newcome was conducting an investigation into the Building Department, and as I understand it, there turned up a number of things and they were going to take Don Adams to task and they asked me if I could contribute anything at that time.

I told them I did not want to be involved. I had very few dealings at that time with Don Adams as such as I was just—my only actual dealings with the Building Department at that time was driveways, patios, things of this nature, very minor.

Q. And did they—did Mr. Newcome elaborate or Mr. Sardella or Mr. St. Pierre elaborate on what they meant when they said, "taking to task"?

A. Well, yes, in a way. They said they were going to get him, they had some things on him, and put him in jail.

* * *

[573] A. Run that by me one more time.

Q. What I'm after, in discussing with you the fact that they were investigating Mr. Adams, did Mr. St. Pierre's problem with Mr. Adams come up in the discussion?

A. Most definitely.

Q. Now, did Mr. Sardella or Mr. Newcome indicate—let's take first of all Mr. Sardella: Did Mr. Sardella indicate to you this being one of the factors involved in his investigation?

Mr. Albury: I'm going to have to object to the leading and—

The Court: Just ask him what he remembers.

By Mr. Hazouri:

Q. What do you remember of the conversation with Mr. Sardella in reference to Mr. St. Pierre?

A. Yes, it was definitely in reference to Mr. St. Pierre inasmuch as there was a situation that I was aware of.

The Court: The question was, the conversation of Mr. Sardella's concerning Mr. St. Pierre; not your knowledge of anything else. Just a conversation, please.

The Witness: Your Honor, it's so vague, such a long time ago.

* * *